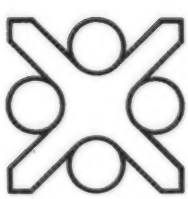
ELEVENTH ANNUAL REPORT

OF THE

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

1987



HUMAN RIGHTS COMMISSION

PRINCE EDWARD ISLAND

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The Honourable Wayne D. Cheverie, Q. C.
Minister Responsible for Human Rights
Province of Prince Edward Island

Sir:

We are privileged to submit to you, the Minister Responsible for Human Rights within the Province of Prince Edward Island, the Eleventh Annual Report of the Prince Edward Island Human Rights Commission for the calendar year ending December 31, 1987.

Respectfully submitted,

Rev. J. Leo Trainor
Chairperson

The four symmetrical bodies of the logo, round heads and outstretched arms, represent the function of the P.E.I. Human Rights Commission — the protection of the human rights of the individual, as an individual and as a part of society. The outstretched limbs also represent the varying channels used by the Commission to reform, educate, and respond to complaints of individuals and groups.

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CHAIRPERSON'S REMARKS

The presentation of the Eleventh Annual Report of the P. E. I. Human Rights Commission offers an opportunity to review the Commission's work during 1987, my first year as the Commission's Chairperson. My first year as a Commissioner was, as it is for every new Commissioner appointed to the position, a learning and growing experience. This is especially so since human rights issues are becoming more complicated and diverse.

I wish first to express my appreciation for the support offered me by my two associate Commissioners and the contribution they made in assisting the Commission in the administration of the Human Rights Act. They provided a continuity and experience which helped me in my work as the Commission Chairperson and enabled the Commission to maintain the high standards and reputation it has gained over the past decade. A special note of appreciation and thanks is extended to Mrs. Ruth MacLeod for her six years of unselfish service with the Commission.

The Commission's staff deserves special recognition for their dedication and professional service, especially in the face of a work load which has grown beyond the capabilities of staff time and resources. I am also appreciative of the assistance they provided me as I assumed the Chairperson's role with little experience in the area of human rights legislation.

I also wish to express my thanks for the support offered the Commission by the Minister Responsible for Human Rights and the legal counsel provided from the Department of Justice. Without their assistance the Commission could not have functioned as effectively as it did in 1987.

Human Rights issues resulting from complaints are becoming more complicated requiring greater legal assistance to address the issues. The P. E. I. Commission, like all other human rights commissions, faces an increasing number of legal challenges in its efforts to investigate and settle complaints and the service provided by the Minister and the legal counsel has been invaluable in handling complaints and procedural policies followed by the Commission.

Chairperson's Remarks (continued)

It is noteworthy that although the Commission did not obtain a requested third staff member, the Commission's budget for 1987 - 1988 was the first in the history of the Commission to provide adequate funding for its current staff and the administrative expenses of the Commission. This permitted the Commission to shift its attention from budget crisis management to other vital concerns and issues confronting it.

1988 will see the Commission seriously address what it perceives to be the two most important areas of its mandate, the timely handling and resolutions of complaints and the development of an education program which will more effectively reach all Island residents. Realistic choices and priorities will be established within the staff's time and resources to address these issues. The Commission recognizes that these areas of concern relate directly to the image the Commission projects as an effective administrator of human rights legislation.

The Commission is also awaiting the decision of the Supreme Court in the political belief discrimination reference addressed to the court by Government. We at the Commission are aware the decision will directly affect not only those individuals who have filed political belief complaints, but also those who may wish in the future to file complaints alleging political belief discrimination.

THE PRINCE EDWARD ISLAND HUMAN RIGHTS ACT

The P. E. I. Human Rights Act was assented to by the Provincial Legislature on December 21, 1975 and proclaimed effective as of September 11, 1976. The Act became the paramount law of the province on September 11, 1979, three years from the date of its proclamation. The three year period was designed to permit the Government to bring all its statutes and regulations into conformity with the Human Rights Act.

Like all other provincial legislation, the Human Rights Act has been amended a number of times. In 1980 the Act was amended to prohibit discrimination based on physical disability and age in the areas of access to services, accommodations and facilities as well as in employment. In 1982 the Act was amended to permit the Minister Responsible for Human Rights to direct a Board of Inquiry to be held "in camera", that is, closed to the public and the news media, when it is deemed that the holding of a public board of inquiry would not serve the public interest. In 1984 the Legislature amended the Act to exempt discrimination because of age in access to services, facilities and accommodations where a provincial statute specifies age limitations in access to these services, facilities or accommodations. Two 1985 amendments brought the Act into closer conformity with the Charter of Rights and Freedoms; the definition of age (18-65) was removed and mental handicap was added as a proscribed ground of discrimination. The Act was also amended to exempt the Commission employees from the Civil Service Act, thereby placing the employees of the Commission under the sole jurisdiction of the Commission.

In November of 1986 the Provincial Government applied to the P. E. I. Supreme Court for an interpretation of "political belief" discrimination as it is defined in the P. E. I. Human Rights Act. The reference to the Court also contained several questions on the jurisdiction and procedures of the Human Rights Commission. The Supreme Court hearings on the reference are scheduled to begin on March 7 - 9, 1988.

The function and purpose of the P. E. I. Human Rights Act is to eliminate discrimination within the areas of jurisdiction which are subject

to provincial legislation. Although the terms "human rights" and "discrimination" encompass a wide variety of rights, the Human Rights Act prohibits discrimination in only a limited number of areas and for a limited number of reasons. The Act protects Island residents from discrimination in employment and in access to services, accommodations and facilities.

Areas of employment protected by the Act include pre-employment application forms, job resumes, job interviews, hiring, promotions, firings, differential treatment on the job and mandatory retirement.

Areas of services, accommodations and facilities covered by the Act include access to education, credit, government services, rental accommodations, hotels, motels, restaurants, theatres, recreational facilities, camp grounds, business establishments, malls, stores, and any building or facility to which the public has access.

The prohibited grounds of discrimination include race, religion, creed, colour, sex, marital status, national or ethnic origin, physical or mental handicap, and political belief. The Act also prohibits discrimination in pay on any of these grounds by defining what constitutes equal pay for individuals who are doing essentially the same work.

The P. E. I. Human Rights Act is not a part of the Criminal Code nor is the Commission a court of law with the authority to impose a settlement of complaints filed with the Commission. The Commission's duty, as defined in the Human Rights Act, is to investigate and attempt to settle all complaints filed under the Act. If the Commission is unable to accomplish this, a report is forwarded to the Minister Responsible for Human Rights who has the authority to convene a public board of inquiry to hear the complaint. The Commission, however, is party to any complaint coming before a board of inquiry.

The P. E. I. Human Rights Act is designed to be an expression of the values of Island society and, as such, should provide support for those values by creating a law which requires respect for those values. While morality cannot be legislated, acts of discrimination can be prohibited by

law and this in itself should reduce the level of prejudice. As long as people are treated unequally, the tendency will be there to see them as unequal. When the occasion to treat people unequally is removed through human rights legislation, the tendency to see them as unequal will be lessened.

THE P. E. I. HUMAN RIGHTS COMMISSION

The P. E. I. Human Rights Commission, as mandated by the P. E. I. Human Rights Act, is composed of three Commissioners with each appointed to a three-year term by the Lieutenant Governor in Council. The terms of the three Commissioners are staggered so that the term of office of only one Commissioner expires in any given year. This assures that the Commission will have a majority of Commissioners with some experience in dealing with human rights issues. Commissioners have also been reappointed for a second three-year term, thereby providing the Commission with additional expertise in the administration of the Human Rights Act. This year Ms. Shauna Sullivan Curley was appointed to the Commission to replace Mrs. Ruth MacLeod who completed her second term as a Commissioner in December, 1987. During 1987 the Commission was comprised of the following members:

J. Leo Trainor, Chairperson, appointed December 18, 1986;
Ruth MacLeod, term of office December 11, 1981 - December 11, 1987;
Richard Noonan, appointed August 1, 1985;
Shauna Sullivan Curley, appointed December 13, 1987.

The administrative staff, working under the direct supervision of the Commission, was composed of the following individuals:

Thomas W. Klewin, Executive Director;
Frances Piercey, Research/Intake Officer.

The Commissioners

Rev. J. Leo Trainor, Chairperson, Hope River
January - December, 1987

Father Trainor is presently serving the parishes of St. Ann's in Hope River and St. James in Summerfield. Prior to his assignment to these parishes, he served the St. Dunstan's Basilica Parish in Charlottetown from 1983 to 1986. During this same period he also served as the Roman Catholic Chaplain of Sleepy Hollow Correctional Centre. Father Trainor received his education at St. Dunstan's University, the University of Prince Edward Island, Memorial University of Newfoundland and St. Augustine's Seminary in Toronto. Prior to studying at St. Augustine's, he was employed with the Federal Government in Toronto and taught high school in Newfoundland. He received his Master of Divinity degree from St. Augustine's Seminary in 1983 and was ordained to the priesthood the same year in the Diocese of Charlottetown. Father Trainor is the official representative for P. E. I. on the Continuing Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights.

Ruth MacLeod, Commissioner, Montague
January - December, 1987

Ruth MacLeod served as Superintendent of Business Affairs for Regional Administrative School Unit Four until her retirement in 1979. She is currently the Secretary-Treasurer of Montague Christian Church; she has been an active member of the King's County Hospital Ladies' Auxiliary; she is a Past President of the Montague Home and School Association and the Provincial Women's Progressive Conservative Association. She has also been active in various community projects such as Community Schools and a community choir.

Richard Noonan, Commissioner, Summerside
January - December, 1987

Richard Noonan received his B. A. from St. Dunstan's University,

his B. Ed. from St. Francis Xavier University and his Diploma in Education from the University of New Brunswick. Mr. Noonan has participated in a wide variety of civic and community activities, has served on a number of boards and has held office in national organizations. Mr. Noonan has been a teacher, Vice Principal and Principal of Summerside High School. He is currently the Assistant Superintendent of Regional Administrative School Unit Two, a member of the School Administrators of P. E. I. and a member of the Canadian Association of School Administrators.

Shauna Sullivan Curley, Charlottetown
December, 1987 -

Shauna Sullivan Curley is a lawyer with the law firm of Mullin, Carr, Stevenson and MacKay. She graduated from Dalhousie University with a Bachelor of Arts degree in 1979 and a Bachelor of Laws degree in 1982. While attending law school, she served as the University Ombudsman. Ms. Curley was admitted to the Bar of Nova Scotia in 1982 and the Bar of Prince Edward Island in 1984. She is Secretary of the Prince Edward Island Branch of the Canadian Bar Association and Past President of the Community Legal Information Association of Prince Edward Island. She has also served as Vice-President and as Treasurer of Home Base Inc., a non-profit corporation providing housing for persons recovering from mental illness.

THE ROLE AND FUNCTION OF THE COMMISSION

The Human Rights Commission has three primary functions in administering and enforcing the Human Rights Act. The Commission must investigate and attempt to settle all formal complaints lodged with the Commission. It must also develop a program of public education and information which advances the principle that every person is free and equal in dignity and rights. The educational aspect of the Commission's work is designed to discourage and eliminate discrimination. In addition, the Commission is responsible for providing government, businesses and

private citizens with information relating to human rights legislation.

The daily adminstrative work of the Commission is the responsibility of the Commission's staff. This work includes responding to inquires from the public, investigating formal complaints, answering correspondence, maintaining Commission files, researching human rights precedents, preparing educational materials, providing educational seminars and human rights education sessions, maintaining liaison with other human rights commissions, advising government agencies and private businesses concerning human rights issues and preparing materials for the Commissioners' consideration. Policy formulation, news releases, budgetary submissions, making a determination or finding on a formal complaint, acting as a conciliator in a settlement procedure, maintaining a liaison with the Minister Responsible for Human Rights and supervising the Commission's staff are the primary responsibilities of the three Commissioners.

To achieve procedural fairness in handling complaints, the Commission has assigned the investigation into complaints to its staff. The finding of whether the evidence obtained in the investigation appears to substantiate the complaint is the responsibility of the three Commissioners, who function as impartial evaluators of the merits of the complaint. If the Commission concludes that it appears an act of discrimination has occurred, the Chairperson assumes the responsibility of a conciliator in attempting to effect a settlement satisfactory to both parties.

During 1987 the Commission held sixteen regular meetings, while the Chairperson met with the staff on a regular basis to deal with Commission business. In addition, the Chairperson represented the Provincial Government at meetings and conferences of the Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. A major function of this Committee is to determine, by regular information exchange, the extent to which Canada and the provinces have implemented the provisions of the international human rights agreements to which Canada is a party.

Investigation and Settlement Procedures

Any person who has reasonable grounds for believing that he/she has been discriminated against in the areas of employment or access to services,

facilities or accommodations on the basis of any of the ten prohibited categories of discrimination has the right to file a complaint with the Human Rights Commission.

The procedure for the investigaiton and settlement of a complaint that is being followed by the Commission is:

1. Investigation of the Complaint: Both the individual making the complaint and the person/company against whom the complaint is made are interviewed so that the Commission will hear the evidence produced by both. Additional evidence is sought through interviews with other persons and from relevant documents.

2. Decision by the Commission: The Human Rights Commission decides, on the basis of the evidence it has, whether it believes an act of discrimination did or did not occur. The guidelines for making the decision are those used in civil court cases, where the concept of the balance of probabilities is used to make a determination. This is different from a criminal court where it must be proven "beyond a reasonable doubt". Both parties are informed of the Commission's decision.

3. Attempt at Settlement: If the Commission believes discrimination has occurred, an attempt is made to achieve a settlement between the two parties. The Commission cannot impose any settlement on either party, but can only attempt to be a conciliator to help the two parties reach an agreement.

4. Report to the Minister Responsible for Human Rights: If either of the two parties does not accept the Commission's decision, if either party does not want to settle, or if either refuses to accept the settlement terms requested by the other party, the Commission must forward whatever information it has concerning the complaint to the Minister Responsible for Human Rights. The Minister must then decide if a board of inquiry is to be called.

5. Board of Inquiry: A board of inquiry consists of one or more persons appointed by the Minister Responsible for Human Rights. The Board will call all the witnesses who might be able to testify and have them testify under oath. The three parties to the board of inquiry are the individual who filed the complaint, the person or organization against whom the complaint has been filed, and the Human Rights Commission. The parties involved can represent themselves or have a lawyer represent them.

6. Order by Minister Responsible for Human Rights: The board ofinquiry hears the evidence and then makes a decision. If the board decides that discrimination did occur, the board recommends to the Human Rights Commission what the settlement is to be and the Human Rights Commission forwards the terms of settlement to the Minister Responsible for Human Rights who then issues an order specifying what the terms of settlement will be.

The Commission's rules of evidence

The Rules of Evidence utilized by the Commission in reaching a conclusion that the evidence appears to support or does not appear to support a complaint are those based on principles established by human rights commissions across Canada, boards of inquiry and courts.

Fundamentally, the Commission operates with the following three basic principles:

1. In order to establish a contravention of the Human Rights Act, it is not necessary to demonstrate an intent to discriminate on the part of the respondent provided a discriminatory result does, in fact, occur.

2. In order to establish a contravention of the Act it is not necessary to prove that discrimination is the sole factor or even the most signigicant factor motivating the alleged discriminatory act. It need be ONLY ONE FACTOR.

3. To establish that a contravention of the Human Rights Act has occurred, a human rights commission operates on the principle of the "balance of probabilities," or as a board of inquiry has stated, "The balance of circumstances leads to the conclusion that a contravention has occurred, whether conscious or unconscious."

COMMISSION HIGHLIGHTS

During 1987 the Commission dealt with the following major issues, policies, procedures and events.

1. The preparation and release of the 1986 Human Rights Commission annual report. Included in the report was a history of Commission members, staff, and Commission activities over the 10 year period of the Commission's existence.

2. Participation together with the Commission's legal counsel in the research and development of the Commission's case in the reference to be heard by the Supreme Court concerning political belief discrimination and the Commission's jurisdiction in the investigation and settlement of complaints.

3. The development of a policy relating to the ownership and termination of complaints when a complainant wishes to withdraw his/her complaint.

4. The development of procedure relating to the granting of exemptions to the P. E. I. Human Rights Act on the basis of an affirmative action program or a "bona fide" qualification for employment services.

5. Human Rights Day, December 10, was observed by the Commission with a number of news media releases, an appearance by the Executive Director on a radio talk show and a public announcement of Human Rights Day by the Minister responsible for Human Rights and the Commission Chairperson.

7. The Commission prepared a set of guidelines at the request of the Department of Labor relating to drug testing by employers as it affects the rights of employees (Guidelines are in Appendex A).

8. The Commission was invited to chair a half-day session at the annual meeting of the Provincial, Federal, and Territorial Human Rights Commissions (Canadian Association of Statutory Human Rights Agencies).

9. The Commission developed a policy on media presentations and news releases concerning human rights issues.

10. The Commission approved the following exemptions to the P. E. I. Human Rights Act:

a. Staffing of three young offenders facilities in terms of female and male staff requirements.

b. Six training programs established under the Canadian Jobs Strategy Program including five Job Re-entry programs for females and Innovations programs for females.

c. A job development program for youth and students sponsored by the Department of Industry.

11. During 1987 the Commission reviewed 10 employment application forms from businesses and industries as well as the proposed revisions to birth, death, marriage and stillbirth vital statistics forms to be utilized by provincial governments.

12. The Commission proposed to the Government that the following amendments be made to the P. E. I. Human Rights Act.

a. That "family status" be included as a prohibited ground of discrimination. This would prohibit discrimination based on family relationships such as husband/wife, parent/child, or brother/sister.

b. That pregnancy be included under sex discrimination so that discrimination based on pregnancy is clearly prohibited.

c. That the Commission be authorized to initiate complaints where there is evidence of systemic discrimination and where individuals, because of fear of reprisals in securing future employment are unable to initiate a formal complaint.

d. That "source of income" be added as a prohibited ground of discrimination to ensure that an individual's source of income, whether from any level of government, from separation or maintenance payments, etc., is not utilized to deny an individual or class of individuals access to services, accommodations or facilities. Included in such maintenance income are payments from Workers' Compensation, disability pensions, unemployment insurance benefits, or insurance and investment income.

FORMAL, SIGNED COMPLAINTS

During 1987 The Commission dealt with 179 formal, signed complaints; 147 were carried over from 1986 while 32 were originated in 1987. Of the 32 complaints filed in 1987, five were in areas of discrimination not previously dealt with by the Commission:

1. Physical handicap, the condition of alcoholism and access to facility.
2. Physical handicap, the condition of alcoholism, and access to rental accommodations.
3. Religion and access to a service.
4. Physical handicap and access to an amusement facility.
5. Association based on age and access to a rental accommodation.

Several trends emerged in 1987 relating to the number of formal, signed complaints received by the Commission. There was a sharp decline both in the number of complaints as well as an increase in the number of individuals who were unwilling or hesitant to file complaints even though their allegations of discrimination fell within the jurisdiction of The Human Rights Act.

The following three tables provide a breakdown of the various categories of complaints handled by the Commission in 1987 and the status of the complaints. Tables I and II detail the types of complaints carried over from 1986 and those initiated in 1987. Table III describes the types of complaints settled, in the process of settlement or withdrawn by the complainant.

The Commission will carry over into 1988 161 active complaints filed in previous years.

TABLE I

Complaints Carried over to 1987

	Employment	Services	Accommodations	Facilities	Total
Age	3	3	1		7
Race/Colour	1				1
Ethnic/National Origin					
Marital Status	1	5	3		9
Physical Handicap	5	5			10
Mental Handicap	1				1
Religion	1				1
Sex	6	2			8
Sexual Harassment	11				11
Political Belief	106				106
Association[a]	3				3
Filed a Previous Complaint	1				1
TOTALS	139	15	4		158[b]

a. "Association" means association with an individual or group of individuals who belong to one of the protected categories based on race, sex, age, religion, etc.

b. This is an inflated figure as the total number of complaints carried over to 1987 from 1986 was 147. The higher figure is based on the 9 complaints filed under multiple grounds of discrimination.

TABLE II

Categories of Formal, Signed Complaints initiated in 1987

	Employment	Services	Accommodations	Facilities	Total
Age	2				2
Race/Colour					
Ethnic/National Origin					
Marital Status					
Physical Handicap	3		1	2	6
Mental Handicap	1				1
Religion/Creed		2			2
Sex	1	1			2
Sexual Harassment	1				1
Political Belief	18		1		19
Association[a]			2		2
Filed a Previous Complaint					
TOTALS	26	3	4	2	35[b]

a. "Association" means association with an individual or group of individuals who belong to one of the protected categories based on race, sex, age, religion, etc.

b. This is an inflated figure as the total number of complaints initiated in 1987 was 32. The higher figure (35) results from one complaint filed under multiple grounds of discrimination.

TABLE III

Complaints Settled, in Process of Settlement, or Withdrawn in 1987

	Settled or Terminated	In Process of Settlement	Withdrawn Complaint	Total
Age	1	1	1	3
Race/Colour				
Ethnic/National Origin				
Marital Status	2	1	1	4
Physical Handicap	3	2	1	6
Mental Handicap	1			1
Religion	1			1
Sex	4		1	5
Sexual Harassment		1		1
Political Belief		5[a]	2	7
Association			1	1
Filed a Previous Complaint				
TOTAL	12	10	7	29

a. Investigation into 5 political belief complaints has been completed. Settlement proceedings await the Supreme Court hearing of a government reference relating to political belief discrimination.

SAMPLE COMPLAINTS

Employment/Sex:

Two high school males complained that their part-time employment with a retail establishment was terminated because they were male. They alleged that at the time of their termination (allegedly because of a shortage of work) a part-time female staff member was hired. In addition, no females were terminated. The terms of settlement included the wages the two males lost between the time of their termination and the permanent closure of the retail establishment, as well as the promise of a letter of reference on request.

Employment/Physical Disability:

A man alleged that he was not hired as a foreman of a work crew because it was believed he had a problem with drinking and had left his 3 previous jobs because of an alcohol problem. An investigation into the complaint revealed the man did not have a drinking problem in the 15 years previous to the investigation and had successfully held jobs over that period of time. The Commission concluded that the evidence supported the allegation of the complainant and that he had been discriminated against because of a perceived physical handicap, the condition of alcoholism. The complainant's settlement requests were that the respondent issue him a letter of apology and that he be allowed to compete for any position made available by the respondent for which the complainant qualified.

Employment/Sex:

A male alleged that he was not called to work on a regular basis as a waiter at a restaurant because he was a male and the restaurant preferred females to wait on tables and, consquently, provided them with regular shifts. The Commission's investigation did not uncover any evidence to substantiate the complaint. The evidence appeared to indicate he was not called to work on a regular basis because he was unsuitable for work in a busy dining room. The Commission, consequently, concluded that the evidence did not support the allegations of the complainant.

Employment/Age:

A female filed a complaint that she was discriminated against in the number of hours she worked at a restaurant because she was over eighteen (18) and subject to the minimum wage law. She also alleged that the employer preferred hiring employees under the age of eighteen (18) because they could be paid a sub-minimum wage. The Commission's investigation found that three of the four full-time waitresses were over 18 and that of the seventeen waitresses provided a trial period for the purpose of assessing their qualifications, only three were under 18. The Commission, consequently, concluded that the evidence did not appear to support the complaint.

Employment/Physical Handicap:

A physically handicapped person filed a complaint with the Commission alleging his employer fired him because of his physical handicap without attempting to make a reasonable accommodation for his handicap, thereby permitting him to function efficiently while at work. The Commission's investigation found that reasonable accommodation had been made and that it was the complainant's poor work habits that resulted in his termination. The Commission, consequently, concluded that the complainant's physical handicap was not one of the reasons for the termination.

Access to a Facility/Physical Handicap:

An individual confined to a wheelchair complained that he was unable to find adequate seating in a facility of the type enjoyed by other patrons of the facility. The Commission found that while the complainant had access to the facility, management was discriminating by not providing the complainant the opportunity to choose where he wished to be seated. Since other patrons of the facility had this right, the complainant should have possessed the same right. Terms of settlement included an agreement to alter the seating accessibility so that individuals in a wheelchair may have the right to choose where they wish to be seated.

Employment/age:

A school bus driver filed a formal complaint alleging he was being discriminated against because of age in that he would not be allowed to continue to drive a school bus in 1988 because he had reached the mandatory retirement age of 65. The driver, however, withdrew his complaint before the Commission could begin its investigation into his complaint.

Accommodation/Association (Age):

A single parent filed a complaint alleging she was asked to vacate her apartment because she had a small child. The Commission accepted the complaint based on that section of the Human Rights Act which prohibits discrimination because of association with an individual or group of individuals from one of the prohibited categories of discrimination. Her complaint alleged she was discriminated against for associating with an infant. The complainant, however, withdrew her complaint prior to the completion of the Commission's investigation into the complaint stating her landlord had offered her alternate accommodations which met the complainant's requirements for an apartment suitable for herself and her child.

COMPLAINTS REFERRED TO THE CANADIAN HUMAN RIGHTS COMMISSION

When it appears that a complaint falls within the jurisdiction of the Canadian Human Rights Act, the P.E.I. Human Rights Commission assists individuals in contacting the Canadian Human Rights Commission's Atlantic Regional Office in Halifax. The Canadian Human Rights Commission is responsible for areas of employment and services which are federally mandated or regulated. Examples of these are Employment and Immigation Canada, the Federal Civil Service, banks, airlines, railroads, ferry services, inter-provincial trucking and other federal services or facilities available to the public.

INQUIRIES FROM THE PUBLIC

During 1987 The Commission continued to be a resource utilized by individuals seeking information regarding what they perceive to be the protection or violation of their rights. Those who call the Commission or visit its office believe some of their rights have been denied them and assume the Human Rights Commission is the agency responsible for protecting those rights.

While the Commission's mandate does not necessitate providing answers or assistance in finding the proper authority to deal with all such inquiries, the Commission believes providing informational assistance lies within the spirit of the Act. It is one aspect of the Commission's educational function to assist individuals in defining the nature of the rights in question, whether they are Charter rights, rights protected under other human rights legislation or rights falling within the jurisdiction of a federal, provincial or municipal statute. Some inquiries may require additional calls from Commission staff in an attempt to assist the individual in finding the proper agency or government department to further pursue their complaints and problems.. The majority of these inquiries could be handled by two agencies or services currently unavailable on the Island -- an ombudsman and a civil legal aid service.

Recommendations are made to government when the Commission discerns an area where further legislation may be required to address the issues raised by inquiries to the Commission and where a significant number of inquiries would indicate a review of government statutes or regulations.

EDUCATION AND INFORMATION PROGRAM

The Commission's educational activities for 1987 included speaking engagements, seminars, media contacts and the dissemination of printed materials prepared by the Commission. Sixteen education presentations were made during 1987, primarily to groups involved in classes designed to facilitate entry into the job market by women who have been out of the labour force for a period of time and for those young adults who require upgrading of their academic and skill levels before entering the job market competition.

A concerted effort was made by the Commission to publicize human rights in relation to Human Rights Day which is observed each year on December 10th. The media were used extensively to reach the Island population with information relating to human rights.

The Commission also began to review its education program in terms of the priority to be assigned this aspect of its mandate. The review focused on several areas of immediate concern including the need to revise, update and enhance the educational materials produced in 1980 and to focus on the researching of materials which can be utilized by the Department of Education in the introduction of human rights materials into the school curriculum. Printed materials which can be circulated to businesses, industry and unions must also be developed and distributed across the Island. A program for the greater use of the media in disseminationg human rights information was also considered as a means of reaching a larger portion of the Island population.

The year 1987 witnessed an increase in the number of calls to the Commission office for information concerning human rights legislation as it applies to all aspects of employment, including employment advertisements, pre-employment applications, job interviews and the hiring of staff. The Commission believes the increase in the number of these inquiries is an indication of the increasing awareness of human rights legislation as it applies to the entire employment process.

PROJECTED GOALS FOR 1988

During 1987 the Commission devoted time to the development of a number of priorities, projections, and goals for 1988 which would enable the Commission to more effectively and efficiently administer the Human Rights Act. Among the goals and objectives the Commission has established for 1988 are the following:

1. The Development of an Effective Education Program:

The Commission's first priority will be the development of a comprehensive human rights education program which will seriously address the education mandate imposed on the Commission by the Human Rights Act. The Commission will develop human rights education resource materials to assist the P.E.I. Department of Education to incorporate human rights education into the school curriculum. These materials will also be made available to teachers providing human rights education. The Commission's current human rights education material requires updating, redrafting as well as the inclusion of special areas of concern which have arisen since the materials were first prepared in 1980.

Target groups will be established by the Commission so that special materials can be designed for these groups. The most critical need is for materials designed for employers focusing on employers' rights and responsibilities and a redrafting of materials relating to discrimination because of handicap, sex, sexual harassment and age.

Staff priorities will be developed in relation to the responsibility for the development of human rights material and education programs and the allocation of staff resources and time for educational purposes.

2. Development of a Policy and Procedural Manual:

The Commission will begin to develop a formal policy and procedural manual, incorporating previously approved Commission policies and procedures, researching and considering additional policies and procedures which can improve the Commission's operational efficiency as well as seeking assistance from other Atlantic human rights commissions in implementing policies and procedures which reflect Atlantic regional requirements for human rights commissions.

3. Relocation of the Commission's Office:

The Commission will continue working with Government in a search for more adequate facilities in terms of space, accessibility for the disabled and the ensurance of confidentiality and privacy for clients visiting or phoning the Commission.

4. Review of Procedures for Rapid Handling of Complaints:

With the dramtic increase in the Commissions's Complaint caseload and an increasing number of complaints carried over into following years, the Commission will review and develop a procedure designed to provide as efficient and prompt haandling of complaints as possible with the limited staff available. Guidlines will be developed to assure fair and suitable handling of all complaints.

5. Public Information Dissemination:

The Commission will review the public information aspect of its education mandate to ascertain how it can better use the media and human rights events to better inform Islanders of the nature and role of the Human Rights Act in preventing and rectifying discrimination in Prince Edward Island. The Commission's efforts in this area of education reflect the description by the Supreme Court of Canada of the purpose and function of human rights legislation; namely, "to promote the goal of equal opportunity for each individual to achieve the life that he or she is able and wishes to have."

6. The Observation of the 40th Anniversary of the Universal Declaration of Human Rights.

Together with all other Human Rights Commissions, the P.E.I. Commission will develop a special information and education program to inform Islanders of the 40th anniversary of the Universal Declaration of Human Rights. Canada joined with other nations in proclaiming this Declaration. The preamble to the P.E.I. Human Rights Act refers to the Declaration as one factor for the passage of the P.E.I. Human Rights Act by the Provincial Legislative in 1975.

APPENDIX A

P. E. I. HUMAN RIGHTS COMMISSION

GUIDELINES ON DRUG TESTING IN THE WORKPLACE

1. "Employer's 'right to know' about employees who take legally prescribed drugs that do not prevent them from fulfilling essential job duties".

Human rights legislation and principles mandate that information concerning disabilities whether of a physical, mental or emotional nature can only be requested by an employer where the disability which may require legally prescribed drugs is directly related to the job or position of the individual with the disability or where the use of legally prescribed drugs would endanger the safety of the individual, co-workers or the public. Assumptions concerning the effects of the legally prescribed drugs on the individual are not valid criteria for assessing ability to be assigned to a job, task or position. Scientific, objective studies must be the criteria and, in addition, medical evidence from a competent physician must indicate any adverse effect the legally prescribed drug may have on that particular individual's ability to function adequately in his/her job.

2. "Accuracy of testing methods - state of the technology, laboratory quality control":

Extreme care should be taken that the laboratory utilized for testing has the equipment and expertise to analyze samples. In addition, research should be conducted as to the accuracy of current testing methods and the need for multiple testing for verification purposes. Testing should be done so that a differentiation can be made between the "recreational" user of drugs and the abuser of drugs. Because recreational use of drugs can be found several days after use, extreme care should be taken to differentiate between the "recreational" user and the abuser. A corollary may be found in the difference between a "social drinker" and the active alcoholic. Testing methods must be devised to single out the "abuser", whose continual or daily use of drugs interferes with his/her work perfomance and the safety of co-workers and/or the public. Since drug testing cannot ascertain whether drug use has occured on the job or is affecting job performance, other evidence must accompany the results of drug testing or the need for drug testing. An interview with the employee

should attempt to ascertain the cause of poor work performace or perceived hazards to co-workers and the public. Counselling should precede any request for drug testing to eliminate other factors which may be responsible for the employee's work problems. A differentiation should not be made between alcohol and drug abuse. Where either affects work performance, treatment of the abuse should be identical. Drug or alcohol use at work and appearance at work with adverse effects from either alcohol or drug abuse should be handled with the same disciplinary actions and be clearly indicated in a company's policy statement.

3. "Role of testing workers for exposure to toxic substances resulting from workplace processes or environment".

This type of testing should be conducted on a periodic basis to prevent absenteeism, disabilities and long-term compensation for disabilities arising from hazardous work conditions. Poor work performance may be directly attributable to a hazardous work environment.

4. "Performance testing vs. drug testing".

Performance evaluations are a far more effective management tool since only a percentage of substandard performance problems with employees are related to drug abuse. Performance testing coupled with empathetic counselling by management can assist employees to seek help for whatever problem may be the underlying cause of a substandard work performance. Drug testing will not pinpoint the majority of employees with work performance problems nor does it identify those employees who may be in the same category as a "social drinker" where their work performance is satisfactory and non-threatening to the safety of co-workers and the public.

5. "Employee assistance programs".

An "employee assistance program" which identifies workers with underlying problems such as drug or alcohol abuse, marital, family, financial or personal problems, emotional difficulties or burnout and aids them in seeking assistance is the preferable management tool for an effective and productive workforce.

6. "Statistical trends in drug consumption in the workplace".

Care must be taken that the statistics differentiate between drug consumption in the workplace and drug consumption outside the strictures of the workplace in terms of time and place. An individual who tests positive for drugs cannot be assumed to have consumed or used them at work or had the adverse effects of their use carry over into the workplace. Statistics must clearly delineate between these categories to have any validity in assessing drug use which affects an employee's work performance.

Drug testing as a result of a performance evaluation and counselling should be used only when the performance evaluation indicates:

a. Job perfomance and productivity are adversely affected by drug abuse.
b. Suspected drug abuse causes unscheduled absences from work on a recurring basis or makes the individual habitually late for work.
c. Drug abuse may be adversely affecting the employee's safety or safety of co-workers and the public.
d. Drug use on the job is suspected and it is a clear violation of company work rules or regulations which have been distributed to the employees.